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NORTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HRL

C 07 3297

Svetlana Nikitenko,

Plaintiff,

vs.

Department of Homeland Security, Michael
Chertoff, Secretary; United States
Citizenship and Immigration Services,
Emilio T. Gonzalez, Director; United States
Citizenship and Immigration Services,
Rosemary Melville, District Director; US
Attorney General, Alberto Gonzales;
Federal Bureau of Investigation, Robert S.
Mueller, III, Director

Defendants.

Civil No.

PETITION FOR HEARING ON
NATURALIZATION APPLICATION
PURSUANT TO 8 USC SECTION 1447(b)

USCIS Case No.: A 76 038 247

Plaintiff, by her attorneys, complaining of Defendants, alleges as follows:

1. Plaintiff is an individual and resident of the United States who resides in the jurisdiction of this Court. Plaintiff's claim to naturalization arises under 8 United States Code (hereinafter "USC") Section 1421.
2. Defendant Michael Chertoff is the Secretary of the Department of Homeland Security (hereinafter "DHS"). This action is brought against him in his official capacity. He is

1 generally charged with enforcement of the Immigration and Nationality Act, and is
2 further authorized to delegate such powers and authority to subordinate employees of
3 DHS. 8 U.S.C. §1103(a); 8 C.F.R. §2.1.

4 3. Defendant Emilio T. Gonzalez is the Director of the United States Citizenship and
5 Immigration Services (hereinafter "USCIS"), an agency within DHS to whom the
6 Secretary's authority has in part been delegated and is subject to the Secretary's
7 supervision. Defendant Director is generally charged with the overall administration of
8 benefits and immigration services.

9 4. Defendant Rosemary Melville is the Director of the San Francisco District of USCIS.
10 She is generally charged with supervisory authority over all operations of USCIS within
11 her District, including the San Francisco and San Jose Field Offices, with specific
12 exceptions not relevant here. 8 C.F.R. §100.2(d)(2)(ii).

13 5. Defendant Alberto Gonzales is the Attorney General of the United States. He is the
14 head of the U.S. Department of Justice, which includes the Federal Bureau of
15 Investigation (FBI).

16 6. Defendant Robert S. Mueller, III, is Director of the FBI, the law enforcement agency
17 that conducts security clearances for other U.S. government agencies, such as the
18 Department of State. As it will be shown, Defendant has failed to complete the security
19 clearances on Plaintiff's case.

20 7. All Defendants are sued herein in their official capacities. Defendants from DHS and
21 USCIS are responsible for the grant or denial of naturalization applications filed in the
22 San Francisco USCIS district pursuant to 8 USC Sections 1421, 1427 and 8 Code of
23 Federal Regulations (hereinafter "CFR") Sections 2.1, 103.1(b), 310.2, 316.3.

24 Defendants from the Department of Justice are responsible for providing access to
25 criminal history record information.

- 1 8. The Court has jurisdiction of this action pursuant to 8 USC Sections 1447(b) and 2201.
- 2 9. On or about August 30, 2004, Plaintiff filed her application for naturalization with
- 3 USCIS.
- 4 10. On or about April 5, 2005, Defendants and their designated agent examined Plaintiff on
- 5 her application at the USCIS San Jose Field Office.
- 6 11. At her examination, Defendants' agent told Plaintiff that she passed her examination but
- 7 a decision could not yet be made on the application.
- 8 12. Plaintiff has inquired about the status of her naturalization application through USCIS.
- 9 The inquiry response confirmed that her application is pending due to security checks.
- 10 On April 6, 2007, Plaintiff's counsel sent a letter to the District Director and indicated
- 11 that Plaintiff would file this Petition unless her case was adjudicated within 30 days.
- 12 Neither Counsel nor Plaintiff has received a response to this letter.
- 13 13. Plaintiff understands the necessity of background checks, but she was examined over
- 14 two years ago and Defendants have made no decision on Plaintiff's application.
- 15 Defendants have been unable to provide any estimate as to when they will adjudicate the
- 16 application and most likely would allege that they cannot adjudicate it until the
- 17 background checks have been completed. It is Plaintiff's position that two years is more
- 18 than a reasonable amount of time in which to conduct background checks in this case.
- 19 The FBI found no records relating to her when Plaintiff requested a copy of her FBI file.
- 20 14. The Defendants' failure to make a determination of Plaintiff's application within 120
- 21 days after her examination allows Plaintiff to bring the matter to this Court for a hearing
- 22 pursuant to 8 USC Section 1447(b).
- 23 15. Plaintiff desires a judicial determination of her naturalization application and a
- 24 declaration that she is entitled to be naturalized as a citizen of the United States.

25 WHEREFORE, Plaintiff prays that:

1. The Court will hear Plaintiff's case and render a declaratory judgment that she is entitled to be naturalized, and
2. The Court grants such further relief as may be just, lawful and equitable to the premises.

Dated this 21st day of June, 2007



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